



Handbook for Tenants and Landlords

Your Key To Understanding The Law

Written by Fairfax County
Tenant Landlord Commission, and the
Department of Cable Communications
and Consumer Protection
(Updated December 2003)

This December 2003 revision of the Handbook for Tenants and Landlords incorporates the following legislation passed by the 2003 Virginia General Assembly:

- HB1939 - Access to Cable TV
- HB1945 - Ratio Utility Billing System
- HB1951 - Application Fees
- HB2335 - Terms of Rental Agreements
- HB2340 - Prepaid Rent
- HB2341 - Confidentiality of Tenant Records
- HB2342 - Acceptance of Rent with Reservation
- HB2343 - Writs of Possession, Unlawful Detainer
- HB2344 - Bonds in Lieu of Security Deposits
- HB2392 - Attorneys' Fees
- HB2497 - Security Deposit Interest
- HB2498 - Rental Application, Definition

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About the Commission

In October 1971, the Tenant-Landlord Commission was established by the Fairfax County Board of Supervisors to give objective and fair assistance to the County's tenants and landlords. The Commission provides information to educate the public about the rights and responsibilities of tenants and landlords, recommends changes in the tenant-landlord law at all levels of government, represents County interests concerning tenant-landlord matters before legislative and other public and private bodies; and through the staff of the Department of Cable Communications and Consumer Protection, receives and arbitrates tenant-landlord complaints.

The Commission is comprised of ten members appointed by the Board of Supervisors for three-year terms. Three of the Commissioners represent tenants, three represent landlords, and four represent the community-at-large, including one who represents the interests of those who have experienced an apartment conversion to a condominium. The Commission meets on the third Thursday of each month in the Fairfax County Government Center, at 7:30 p.m. The meetings are open to the public and time is available for the public to present ideas, questions or problems concerning rental situations to the Commission. If you wish to attend a Commission meeting or discuss a tenant-landlord problem, contact the staff of the Department of Cable Communications and Consumer Protection at (703) 222-8435.

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INTRODUCTION

The purpose of this handbook is to help explain the law regarding the rights and obligations of landlords and tenants. It should be used only as a guide and is not intended as a final authority or source of legal advice. This handbook is written with the hope that better understanding of the rights and obligations of each party may help prevent conflicts before they occur.

The Virginia Residential Landlord and Tenant Act (VRLTA) is the primary Virginia state law regulating legal relationships between landlord and tenant. It supersedes local, county, and municipal ordinances and regulations. Other codes and ordinances also apply to rental units and agreements. The Virginia Uniform Statewide Building Code provides minimum standards for health and safety as does the National Property Maintenance Code. Fair housing codes are written by the county, state, and federal governments. Fairfax County's Tenant-Landlord Relations ordinance includes additional areas not covered by the state law.

The **Fairfax County Department of Cable Communications and Consumer Protection** (DCCCP) investigates written complaints, mediates disputes, and offers solutions to resolve problems that arise between tenants and landlords. The Fairfax County **Tenant-Landlord Commission** (Commission) represents the County's interests on tenant-landlord matters, provides information to the public on the rights and responsibilities of tenants and landlords, and recommends changes in the law. If a tenant-landlord dispute cannot be resolved by the DCCCP, it may be forwarded to the Commission for binding arbitration if both parties agree. The Commission's decision is as binding as any other contract and is enforceable in court.

Whether a state law, County ordinance, or DCCCP procedure, it is the responsibility of landlords and tenants to understand all requirements and provisions. The intent of this handbook is to assist landlords and tenants in that endeavor.

The Virginia and Fairfax County Tenant-Landlord Laws

Rentals Covered	Rentals Not Covered
<ul style="list-style-type: none"> • Apartment rentals in multiple-unit buildings. • Single-family houses, town homes, duplex houses, or condominium units rented from landlords who own, in their own names, at least five (5) rental units. • All single-family houses, town homes, duplex houses, or condominium units rented from landlords that are not natural persons (commercial businesses such as corporations or business partnerships). • Any dwellings if the lease states that the Virginia Residential Landlord and Tenant Act (VRLTA) applies to the contract. • Hotels, motels, vacation cottages, and boardinghouses if a tenant stays more than 31 consecutive days. • Duplexes that share common areas such as hallways, stairs, foyers or share equipment such as heat or hot water. 	<ul style="list-style-type: none"> • Condominium owners and holders of a cooperative proprietary lease. • Single-family houses, town homes, duplex houses, or condominium units rented from landlords (not businesses or corporations) who own, in their own names, four (4) or fewer rental units. • Tenants who pay no rent, or who are in the process of purchasing their dwelling unit. • Hotels, motels, vacation cottages, and boardinghouses if a tenant stays less than 30 consecutive days. • Employees of the landlord who are required to live on the premises, and ex-employees of the landlord who live there less than 60 days. • Rentals primarily for commercial & agricultural purposes; by a fraternal or social organization (owner) to its members; or living units owned by medical, educational, religious, or penal institutions. • Public or other housing regulated by the U.S. Dept. of Housing and Urban Development (HUD) if such regulation conflicts with the VRLTA. Contact the HUD area office in Washington, D.C. for federal regulations.

I CONSIDERATIONS BEFORE RENTING

Before signing any rental or lease agreement, prospective tenants should carefully read the lease to become familiar with all of its requirements and provisions. All rules and regulations should also be examined, and the landlord should clearly answer all questions. Unacceptable conditions should be noted in writing with the landlord's signed agreement to correct the conditions. Remember, when a rental agreement is signed, it becomes a binding contract.

CONSIDER THE FOLLOWING BEFORE SIGNING A LEASE AGREEMENT

- Inspect the actual unit to be rented before a deposit is made. Examine walls, ceilings, stairs, windows, lights, carpets, plumbing, heating, and kitchen appliances such as stove, refrigerator, and disposal. Check for cleanliness, and note evidence of mice, rats, roaches, insects, or other infestation that might pose a health hazard, and obtain landlord's agreement to exterminate the infestation.
- Responsibility for utility services and account payments should be thoroughly understood. If the tenant pays for utilities, he/she should ask the landlord or utility company for monthly cost estimates, and should know the maximum they can afford to pay for monthly rent and utilities. If the landlord pays for utilities, the lease may allow a rent increase if utility rates go up.
- Heating, and air conditioning (if provided), should be in good operating condition. Understand who is responsible for maintenance on appliances, equipment, and systems such as water, sanitary waste, and electric.
- Security and safety measures such as smoke detectors, deadbolt locks, building-entrance locks, and intercom systems should be checked. Fire exits should be marked, if applicable. Laundry facilities and storage availability, their locations, time restrictions and use should be discussed.
- If pets are allowed, restrictions such as the type, weight, and size of the pet should be discussed and provided in writing. A pet deposit may be required in addition to a normal security deposit. Visually-impaired, hearing-impaired, or mobility-impaired persons are entitled (by fair housing laws) to have a certified guide, hearing, or service dog without the payment of a deposit, but the tenant is/are responsible for any damage caused by their dog.

- Arrangements for the delivery of packages or furniture should be clarified including holding, storage and any limitations. Check on move-in and move-out times and requirements.
- Parking rules and regulations for off-street private lots should be thoroughly understood about the number of tenant's cars allowed, provisions for guest parking, and whether the parking rules are enforced by towing.
- Does the neighborhood provide schools, churches, public transportation, fire and police services, medical, shopping, entertainment, and other features that your lifestyle requires for comfort and convenience. Will the tenant's family be safe and comfortable in the neighborhood. Are there friends nearby?
- Tenants should be certain that the rental unit will be clean and livable, and should inquire if the rental unit will be repainted and recarpeted. Redecorating policies or restrictions should be thoroughly discussed and understood.
- Rental requirements should be known; tenants should ask if carpeting is required on bare floors for noise reduction and, if so, how much of the floor must be covered. Tenants who want appliances not provided in the rental unit should inquire if their installation and use will be allowed.
- The building exterior and landscaping conditions should be examined.
- The neighborhood should be reviewed for services and facilities such as schools, churches, grocers, recreational centers and transportation.

RENTAL APPLICATION AND FEES: A "rental application" is the written application or similar document used by a landlord to determine if a person is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee (also called a service or processing fee) of up to \$32 (maximum) to cover the cost of investigating an applicant's rental and credit history, employment record, and current income. A prospective tenant may be required to provide information that will enable the landlord to make such determinations. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. The landlord may require that each applicant provide a social security

number issued by the Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

An applicant should always receive and save a receipt for the paid application fee and should ask when they will learn if they are approved or rejected for the rental agreement. If the landlord rejects the prospective tenant and the application fee was paid in cash, money order, cashier's check or a certified check, a refund must be made within 10 days of the rejection. The landlord's costs of processing the application, including a credit check(s), may be deducted from the applicant's fee, however, the landlord must provide a list of the actual expenses and costs. If the applicant is approved but fails to rent the premises, the landlord may also deduct his/her actual damages (rental delay, advertising notice) in addition to the itemized processing costs.

ASBESTOS INSPECTION: Asbestos is a natural mineral used in many building products (insulation, floor tiles, and plaster coatings) until it was linked to serious health and respiratory problems and banned from use as of January 1, 1985. The Virginia Uniform Statewide Building Code requires that buildings to be renovated or demolished must be inspected for materials containing asbestos. This does not apply to single-family dwellings, or residential housing with four or fewer units, unless the renovation or demolition is for commercial or public development purposes. Building owners, construction contractors, and homeowners should clearly understand the asbestos situation on their property for compliance with all regulations. Virginia has strict licensure and training requirements for asbestos inspectors, removal contractors, and workers. For more information, contact the Fairfax County Health Department, Air Pollution Control Division (703) 246-2333.

CONFIDENTIALITY OF TENANT FINANCIAL RECORDS: Personal financial information about tenants or prospective tenants is confidential and shall not be shared or released by landlords or their rental agents unless:

- the tenant or prospective tenant has given prior written consent;
- the information is (already) a matter of public record;
- the information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;

- the information is a copy of a material noncompliance notice that has not been remedied by the tenant or, a termination notice given to the tenant under § 55-248.31 and the tenant did not remain in the premises thereafter;
- the information is requested by a law-enforcement or public safety official in the performance of his duties; or
- the information is otherwise provided in the case of an emergency.

In all other instances, the landlord must protect the privacy and confidentiality of the tenant's information and shall not share it with any third party.

FAIR HOUSING: Federal, state, and county laws prohibit discrimination in rental housing. Landlords must accept or reject an applicant on the basis of income, employment, prior rentals, and credit history only. Discrimination on the basis of race, religion, national origin, color, sex, age, marital or familial status, or disability is illegal. Complaints involving special housing programs and/or discrimination issues should be directed to:

- **Fairfax County Department of Housing and Community Development** (703) 246-5280, (703) 385-3578 (TTY), or
- **Fairfax County Human Rights Commission** (703) 324-2953, or (703) 342-2900 (TTY).
- **U.S. Department of Housing and Urban Development** Housing Discrimination Hotline (888) 799-2085 or (800) 927-9275 (TDD), or (215) 656-3450 (TTY).

LEAD-BASED PAINT: Apartments built before 1978 may have paint that contains lead. Breathing or swallowing lead dust, or eating soil or paint chips containing lead may cause serious health problems. According to the U.S. Environmental Protection Agency, lead-based paint in good condition is usually not a hazard. Before a rental agreement starts, landlords must provide a disclosure statement on lead-based paint and a booklet called "Protect Your Family From Lead In Your Home." If a tenant suspects a lead paint problem in the rental unit, the tenant should call:

**Fairfax County Health Department -
Environmental Health Administration**
(703) 246-2205, or (703) 591-6435 (TTY).

OCCUPANCY LIMITS: All persons occupying the rental unit, including minor children, should be listed on the application form. The Virginia Uniform Statewide Building Code (VUSBC) establishes the following occupancy standards that are enforced by the Fairfax County Health Department, however, a landlord may impose more restrictive occupancy limits:

<u>Occupants</u> (maximum)	<u>Bed/Sleeping Room</u> (minimum size)	<u>Room Example</u>
1	70 ft ²	10 feet x 7 feet
2	100 ft ²	10 feet x 10 feet
3	150 ft ²	15 feet x 10 feet
4	200 ft ²	16 feet x 12.5 feet

50 ft² (minimum) sleeping area is required for 2 or more persons.
(Kitchens, bathrooms, hallways, living and dining rooms, non-habitable spaces, and other interior public areas may not be used for sleeping).

DON'T RUSH INTO
A RENTAL AGREEMENT

Both tenants and landlords should check other sources of information before they sign a rental agreement. Prospective tenants should ask other tenants or residents about the landlord and the premises BEFORE they sign a lease agreement. Landlords should do a thorough credit check on ALL prospective tenants and examine their previous rental record. Credit checks may be obtained from the following national credit bureaus for a nominal fee:

Equifax	(800) 685-1111
Experian	(888) 397-3742
The Registry	(800) 999-4010
Trans Union	(800) 916-8800

While it is important to verify an applicant's credit standing at the beginning of a lease, it is also important to keep detailed records during the tenancy, especially if a lease ends badly. Landlords should report non-payment of rent to the credit bureaus. Good record keeping may preserve the legal rights of a tenant or landlord, and tenants who owe money should pay past-due rent if only to clear their credit record.

The Fairfax County Code requires every landlord to post a sign in the rental office advising prospective tenants of the existence of the Fairfax County Tenant-Landlord Commission and a telephone number for tenants to call to contact the Commission. Tenants and landlords may file a written complaint with the Department of Cable Communications and Consumer Protection for assistance in resolving a dispute. DCCCP must investigate and attempt to mediate a complaint before arbitration can be offered. Tenants can also report questionable behavior by a landlord to the Better Business Bureau at (202) 393-8000. This may provide helpful information for other potential tenants.

II SIGNING THE RENTAL AGREEMENT

A lease agreement is a binding contract that defines the landlord's and the tenant's responsibilities. Both parties should read and understand the lease before signing it. This is the final opportunity to question and discuss any provisions, conditions, limitations and requirements that are not thoroughly understood. The tenant must be given a copy of the signed lease agreement not more than one month after its effective date, and preferably within 24 hours of signing. After signing the lease, any changes, modifications, oral promises, conditions and agreements between the tenant and landlord must be in writing and signed by both parties to be enforceable. If either landlord or tenant fails to sign the lease, it still becomes effective and enforceable if the tenant occupies the premises, rent money is paid by the tenant, and accepted by the landlord. All persons who will occupy the premises should be listed on the lease, and those above the age of 18 may be required to sign the lease.

COMMON TERMS, PROVISIONS AND CONDITIONS: Some of the common terms, provisions and conditions found in lease agreements are:

Additional Charges: Tenants should be informed of additional charges for late payment of rent. A landlord may impose late charges, bad check charges, and possibly, reasonable attorney's fees to recover damages for unpaid rent.

Alterations: Alterations are physical changes to the premises by the tenant, including but not limited to: new paint or wall-paper, carpet, significant modifications such as grab bars in the shower/tub areas, or widened doorways for wheelchair access. The landlord may require the tenant to pay for such alterations and may require the unit be returned to its original condition at the tenant's expense. The tenant should obtain a written, signed agreement with the landlord to record who is responsible for what actions and costs.

Authorized occupant: means a person entitled to occupy a dwelling unit or rental unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement. This includes a spouse, "significant other," a relative, or others who move into a rental unit with the lessee.

Conduct: Tenants are fully responsible for the conduct (behavior) of all occupants, their guests, and invitees. A guest/invitee of the tenant may be

barred from the premises by the landlord for conduct that violates the terms of the tenant's rental agreement. The landlord must personally serve written notice upon the guest/invitee that describes the unacceptable conduct as the basis for the landlord's action. The landlord may also apply to a magistrate or the court for a "warrant for trespass" against such guest. The tenant may file a tenant assertion requesting that the General District Court review the landlord's action to bar the guest.

Holdover: "Holdover" refers to a tenant who has possession of the keys (control of access) to a rental premises after the termination date and time set forth in the rental agreement. If a month-to-month lease requires a tenant to return possession of the premises prior to the termination (usually midnight of the last day) and the tenant actually returns the keys (surrenders possession) to the landlord even ten minutes late, the tenant can be declared a holdover and held liable for up to another full month's rent.

Lease Break: Lease break is intentionally vacating the rental premises before the termination date, and tenants should be aware of the consequences of lease breaking. When a lease is broken or terminated prematurely, the tenant can be charged continued rent for the full remainder of the lease, cleaning, damage repairs, redecorating, rental advertising costs, and attorney's and collection fees. Additionally, the landlord may send a bad debt report to national credit offices.

Maintenance: Tenants are generally required to keep the dwelling unit clean and safe. Landlords are required to keep the common (interior and exterior) areas and systems clean, structurally safe, and in good mechanical working condition and repair.

Month-to-month: Many lease agreements provide for a month-to-month continuation of the (original) agreement after the initial termination date. Thereafter, each month is a wholly new rental term, which continually renews until a written notice from either the tenant or landlord to the other is given as required in the agreement. Month-to-month lease agreements are renewed by the Landlord's acceptance of the tenant's rent payment.

Notice: Notice is the communication of a fact (information) from one person to another. A person is deemed to have notice if: 1) he has actual knowledge of it; 2) if he has received notice (in writing); or 3) from all facts and circumstances, he has reason to know that it exists. However, when referring to notice between tenant and landlord (i.e., a service request, termination or

non-renewal notice, or other important statement) the VRLTA and most lease forms require “written notice” or “notice in writing” which means on paper and signed by the sender. Although hand delivery is legally acceptable if provable, it is recommended to send such notice via postal service certified mail with return receipt requested. This provides a dated proof of delivery that cannot be refuted in a court of law.

Occupancy Standards: The maximum number of persons (adult and child) permitted by law to occupy and live in a residential structure. This standard is based upon a minimum square footage of sleeping area per person established by the VUSBC. The landlord may enforce a more restrictive standard than in the VUSBC if the standard is clearly written into the lease agreement before signing. (See table on page 7).

Pets: Allowing or prohibiting pets in the rental premises is determined by the landlord and is usually stated in the lease. Keeping pet(s) in a rental unit when they are prohibited can lead to an eviction. Even if permitted, an additional deposit, cleaning fee, and/or monthly fees may be required for keeping pets.

Possession of Premises: Possession refers to control and/or occupancy; and premises means a dwelling unit, its structure, facilities and grounds. In rental terms, possession of premises refers specifically to possession of the keys and, thereby, control and occupancy of the premises. Possession of the premises does not end at the same time that the lease agreement terminates but rather with the surrender of control of the premises by turning over the keys to the landlord. Until the keys are in the landlord’s possession, a tenant is considered to be a “holdover” and is liable for paying rent through part/all of another lease term.

Prepaid Rent: means money or other security paid more than one (1) month in advance of the rent due date(s) by or on behalf of the tenant into an escrow account and to remain in such account until the rent becomes due. Such prepaid rent may not be drawn down by the landlord for any other use or reason, and may only be drawn upon when the rent is due and payable.

Renewal: All lease agreements have a termination or ending date, and must be renewed or the tenant must vacate the premises. Tenants must know that the law does not require a landlord to renew a lease agreement regardless of how prompt the tenant’s rent payments have been or how long the tenant has rented there. Many lease agreements provide for automatic renewal on either

a month-to-month or full-year basis, however, such automatic renewal must be written into the original agreement. Automatic renewals, especially for a full year, can cause problems if one party expects or depends on an automatic renewal and the other intends or expects termination of the lease. Forgetting about an automatic renewal (if it exists) or assuming it exists when it does not can also create legal and financial problems. It is always advisable for both tenant and landlord to review the lease provisions and communicate their anticipated needs by written notice well before the termination date instead of assuming what may or may not happen.

Security Deposit: A security deposit is money, a bond, or an insurance premium (or any combination thereof) that is temporarily paid to a landlord as a security that the tenant will perform all requirements of the lease agreement. In Virginia, a security deposit may not exceed two (2) month's rent. The landlord must pay interest on the security deposit if held for more than 13 months, and may deduct for damages caused by a tenant. Some landlords charge non-refundable cleaning or redecorating fees instead of or in addition to a security deposit. The lease agreement should clearly identify such deposits and fees and the conditions and provisions under which they are returned or non-refundable (see page 29).

Sub-leasing: Sub-leasing or "subletting" is when the tenant transfers the rental premises to another person for part or all of the remainder of the lease term. Usually, the (original) tenant is responsible for fulfilling the terms and conditions of the rental agreement, including payment of rent, if the sublessee vacates the premises before the lease terminates. A separate document between the tenant and the sub-lessee, incorporating the original lease agreement, should be signed by both parties for mutual understanding and protection. Some rental agreements prohibit sub-leasing, while others require a sublessee to be approved by the landlord. A landlord's denial of the sub-lessee must be given within ten (10) business days or approval is legally assumed and the sub-lease may proceed.

Term (of the Lease): The length or duration of a lease agreement is called the "term" of the lease, and is defined by a start/begin date followed by an end/termination date. A lease may start or end on any day or date of the month, however, unless clearly defined otherwise, a lease starts at midnight on the first day of the month and terminates at midnight on the last day of that same month.

Utilities: Utilities are services such as water and sewer, gas, electricity, cable TV, and telephone. Water and sewer services are often included in the rent, and the lease should clearly state who is responsible for starting, ending and making regular payments for which or all of the utilities. Landlords are required by law to provide equipment for space heating and hot water but are not required to pay for utility services necessary to run the equipment. In multi-family buildings, natural gas, water and sanitary service, and sometimes electricity is/are always master metered, but is usually paid by all of the tenants on a prorated formula that accounts for different size rental units, the number of tenants in each rental unit, and/or other variable factors. This Ratio Utility Billing System is legally permitted only if it is clearly written into the lease agreement and agreed to by both parties before the agreement is signed. When a third party (i.e., a utility distribution or accounting company) provides the billing and administrative services, the actual cost of such services may be uniformly charged to each rental unit in addition to the prorated utility costs. Prospective tenants should always ask the landlord for a written explanation of the billing formula for natural gas and other utility costs before signing a lease agreement.

Other utilities are separately metered for each rental unit, and it is the tenant's responsibility to contact each utility company to open an account in the tenant's name and to pay for use of the utility service. However, under Virginia law, the water authority must place a lien against the property if a tenant fails to pay water and sewage charges. Landlords may withhold up to \$100 of the security deposit until provided a copy of the tenant's paid final bill. Utility companies are not required to notify a landlord of a service disconnection if a tenant fails to pay the service bills. Landlords should contact the tenant and utility companies to ensure that electric power or other essential utility services is not disconnected during extreme weather when damage to the property might result from such service interruption.

HOUSE RULES: House rules are an addendum referenced in the lease and typically cover parking, guests, noise, trash removal, use of common areas, laundry rooms, pools, exercise and/or other facilities, and may establish other policies and obligations on the tenant. Landlords must make tenants aware of the house rules and regulations before the rental agreement is signed. Any changes or new rules adopted after a tenant signs the rental agreement must not cause a material change or substantially alter the value of the lease agreement unless the tenant consents to the change in writing. Tenants should know and practice the rules because they are legally binding.

ILLEGAL CONDITIONS: The following are illegal and unenforceable conditions, even if written into a lease agreement. Tenants cannot be required to:

- Give up rights granted to them under the VRLTA;
- Pay the landlord's attorney fees except as specified in the VRLTA;
- Give up rights to collect damages resulting from the landlord's liability;
- Authorize anyone to confess the tenant's liability on claims made by the landlord against the tenant;
- Give up rights or remedies related to the 120-day notice period required prior to conversion or renovation of apartments to condominiums or cooperatives;
- Give up their rights to the lawful ownership of firearms in their own public housing rental unit, unless required to do so by federal law or regulation. This does not apply to privately owned rental units.

It is very important to ask any/all questions that the tenant and/or landlord may have before signing a lease agreement, particularly if anything is unclear or the terms and rates are different from what was previously agreed or believed. Tenants who find the language difficult to understand or who believe that the agreement is not fully explained by the landlord should consult with an attorney before signing the agreement. If the lease agreement is already signed, a tenant may file a complaint with the DCCCP.

INSPECTION OF THE PREMISES: Virginia law requires landlords to provide a move-in inspection form that lists all parts of the rental unit and itemizes any damages or conditions in the premises at the time of occupancy. If damages are found before the lease agreement is signed, the prospective tenant should obtain a written promise for the necessary repairs before signing the lease. Tenants and landlords should make a photo or video record of the premises, and write any damages or unusual wear on the inspection form for the landlord's attention. The tenant should also write a supplemental list of any other deficiencies, damages or conditions found in the rental unit during the first week of occupancy, and give the landlord a copy. This will help to document pre-existing damages and protect both parties when a move-out inspection is conducted at the end of the lease term.

RENTER'S INSURANCE: The landlord's property insurance usually does not cover loss or damage to a tenant's property and personal belongings. Many leases require tenants to obtain renter's insurance that may also cover losses due to theft, fire, or the negligence of other tenants residing in the premises.

III DURING THE RENTAL

PAYMENT OF RENT: A tenant's most important obligation is to pay the rent on time. A tenant must know clearly whether the landlord requires a personal check, money order, or cashiers or certified check; and whether the payment is to be mailed to the landlord, his bank, delivered in person, or other arrangement. Failure to pay rent, or frequent late payments, can be cause for eviction by the landlord. Upon a default judgment for nonpayment of rent, the VRLTA requires immediate issuance of an eviction notice by the court, and the usual 10-day appeal period for an eviction judgment does not apply. If a tenant is unable to pay rent on time, he/she should explain the situation, in writing, as soon as possible to the landlord who may agree to a different rent payment plan to avoid the inconvenience and cost of eviction proceedings in court.

LANDLORD'S OPTIONS FOR UNPAID RENT:

- **Late Fees:** Late fees and legal fees, if specified in the rental agreement, may be charged in addition to the rent payment that is due.
- **Returned Check Fees:** If a tenant's personal check is returned by a bank for insufficient funds or other reason, a fee may be charged for the returned check if specified in the rental agreement. If the returned check was a rent payment, the rent is unpaid and the tenant may be charged a late fee (if specified in the rental agreement) in addition to the returned check fee and the rent payment itself.
- **Five-Day Notice:** If the tenant's rent payment is late (beyond any allowed grace period), the landlord must give the tenant a written "Pay up or Quit" notice requiring full payment of all rent, fees and penalties within five (5) days of the date of the notice. At the end of those five (5) days, if the rent remains unpaid, the landlord may file a Notice for Unlawful Detainer with the court to begin the eviction process. These actions, however, do not end the tenant's obligation to fulfill the terms of the lease agreement.

RENT INCREASES: A rent increase is a material change of the rental agreement, and is not allowed during the term of an existing agreement. Rent increases may go into effect only at the beginning of a new lease term, and only then if the landlord has provided a (30-day minimum) written notice to the tenant before the first day of the final month of the previous lease agreement. In month-

to-month leases, each month is a new rental term. In Virginia, there is no rent control, therefore, no ceiling or limit for rent increases, and the landlord may legally increase the rent to whatever the market supports. The tenant then has the option of accepting the full rent increase, negotiating a compromise increase based upon the tenant's rental record, or vacating the premises not later than the termination date of the current lease term.

LANDLORD'S RIGHT TO ENTER THE PREMISES: A landlord, his agent, or his service contractor may need to enter a rental unit for inspection purposes, to make repairs, or to show it to prospective tenants or purchasers. Unless a true emergency exists, landlords must notify tenants at least 24 hours in advance of the need or intent to enter, and must enter only during reasonable hours. This 24-hour requirement is waived when entering the premises at the tenant's request (for repairs or service), but the landlord and tenant should discuss and agree beforehand on an acceptable time for the requested service entry. The law requires that the landlord must give a 48-hour written notice in advance of any pesticide or insecticide application in a rental unit and/or its common areas, hallways, lobbies, etc. No entry notice is required for real emergencies such as fire, burst water pipe, overflowing sanitary system, known medical conditions, or other clearly obvious emergencies.

TENANT'S REFUSAL TO PERMIT ACCESS: If a tenant refuses a landlord's lawful and reasonable entry to the rental premises following written notice as required by law and lease agreement, the landlord may take legal action to gain access and/or to terminate the rental agreement, or both.

LANDLORD ABUSE OF ACCESS TO THE RENTAL UNIT: Landlords may not abuse the right to enter the rental unit to harass the tenant. If a landlord enters illegally or abuses the right of entry for the purpose of harassment, the tenant may take legal action to end the rental agreement.

CABLE AND SATELLITE TELEVISION ACCESS: A landlord may not charge a tenant for the cost of cable or satellite TV service unless the landlord is the actual provider of the service, however, a landlord may forward all charges from the television service provider. A landlord may require that a tenant and/or the service provider pay for the installation, operation, and removal of the service the tenant chooses to receive. A landlord may not prohibit a tenant from installing

his/her own video over-the-air broadcast and/or satellite dish antenna at the tenant's cost on a balcony or patio if the tenant has exclusive use of the balcony or patio, but the tenant may not install any antenna on the common roof or grounds of a multiunit residential rental building. If the building has a central video antenna system, a landlord may restrict a tenant's installation of an individual video antenna(s), provided that:

- each tenant receives the particular video programming service that he/she desires and that could be received with an individual antenna (i.e. all providers, not just any provider of the landlord's choosing);
- the video reception (in each rental unit) from the central system is at least as good as the video quality from an individual antenna;
- the cost charged for use of the central system is no greater than those of installation, maintenance and use of an individual's antenna; and
- the landlord's requirement to use the central system does not delay the tenant's ability to receive video programming.

With an acceptable central antenna system that meets these requirements, a landlord can require the removal of individual antennas previously installed on balconies and patios if the cost of removal and the value of the antenna(s) are reimbursed to the individual by the landlord.¹ (Additional FCC regulatory information is on the Internet at: <http://www.fcc.gov/csb/facts/otard.html>.)

DUPLICATE KEYS AND ADDITIONAL LOCKS: Landlords have a legal right to keep copies of all keys to all rental units. If a tenant adds new or additional locks, the landlord must be given a copy of each new or changed key immediately following the change and/or installation. At the end of the rental term, the landlord has the right to require removal of such new or changed locks, and restoration of the premises to its original condition. If the restoration is not properly accomplished, the landlord may declare damages and deduct for their repair from the security deposit. For any alterations or changes, it is best to obtain the landlord's agreement in writing, including his/her restoration

¹Federal Communications Commission FACT SHEET, Over-the-Air Reception Devices (OTARD) Rule, February 2001, pages 5 and 6 of 10.

requirements or agreement to leave the alterations or changes without financial penalty for damages.

TENANT’S ABSENCE FROM PREMISES: Seven-Day Notice. Many rental agreements require tenants to inform the landlord when planning to be absent more than seven (7) days. During such an absence, the landlord may enter the unit to inspect and/or protect the property. If the tenant fails to inform the landlord and damages occur during the tenant’s absence, the tenant may be liable for repair costs. In 2002, § 55-248.33 of the VRLTA was amended to establish a process for the landlord to determine whether a tenant has abandoned the premises. Most lease agreements require the tenant to give notice to the landlord of an extended absence from the premises, i.e., a vacation, business trip, military assignment, etc. In the absence of such notice, the landlord may request (in writing), a written response from the tenant within seven (7) days of the landlord’s request. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises within seven days, the landlord may presume that the premises have been abandoned by the tenant, and the rental agreement may be terminated on that date. If the tenant plans to be absent, is called away on emergency, or otherwise will be absent from the rental premises for an extended time, be certain to notify the landlord of such absence to prevent termination

GENERAL MAINTENANCE RESPONSIBILITIES: The Virginia Uniform Statewide Building Code (VUSBC) sets the minimum standards for all residential dwellings and properties to protect the health, safety and welfare of the occupants, whether owners or tenants. In Fairfax County, this Code is enforced by the Health Department (703 246-2205 or 703 246-2300) which will issue a citation against the property owner (landlord) for any violation of this Code. It is the owner/landlord’s responsibility to maintain these standards, either by himself or by clearly delegating certain of these responsibilities to the tenant in the lease agreement. Unless the lease states otherwise, landlords and tenants generally have the following division of maintenance responsibilities:

Landlords Must:

- Keep the premises fit and habitable, and comply with the health and safety requirements of applicable building codes; and exterminate rodents and other infestations that constitute a health hazard as determined by the Fairfax County Health Department.

- Keep the common areas of two or more units, such as lobbies, hallways, stairs, and walkways clean and structurally safe; and provide sufficient trash receptacle(s) and trash removal service if used by two or more dwelling units.
- Provide running water and sanitary waste system, and maintain plumbing, ventilating, and electrical systems in safe, healthful, and good working order as required by the VUSBC and the Fairfax County Health Department.
- Provide a properly working, well maintained reliable boiler, furnace, heat pump or other space heating system capable of maintaining room temperature at 65°F (18°C) from October 15 to May 1 during the daytime hours of 6:30 a.m. to 10:30 p.m., and not less than 60°F (16°C) during all other hours. The landlord must provide reasonable and reliable amounts of hot water at all times, all year round. Air conditioning, as defined and required in the VUSBC, must be provided for the whole interior of the rental premises.
- Provide and maintain a refrigerator, stove, built-in appliances (i.e. garbage disposal, dishwasher, or clothes dryer) and other mechanical facilities such as elevators and bathroom vent fans. in good and reliable working condition as required in the VUSBC.
- Provide a working smoke detector(s) as required by law and/or the County Fire Marshall's office, and repair or replace it when necessary.
- Provide deadbolt locks and peepholes (or windows) in exterior entrance doors, locks on all exterior windows, and special "charlie bars" for exterior sliding glass doors.

Tenants Must:

- Keep the rental unit clean and safe, and properly dispose of trash, and comply with all requirements of applicable building and housing codes. The tenant(s) can be charged for their negligence and carelessness, such as clogging sanitary drains with foreign materials, puncturing freezer coils during defrosting, or breaking glass windows. Tenant(s) must promptly notify the landlord and/or maintenance personnel of broken or damaged items in need of repairs or services. Extra charges can be

levied if additional damage occurs due to not promptly notifying the landlord. After giving proper notice, the tenant must allow the landlord and/or maintenance personnel access to the premises to accomplish necessary repairs or services.

- Use all utilities and appliances, including elevators, in a reasonable way. Prevent abuse, misuse, or neglect of the rental unit and its appliances, fixtures and grounds. Keep all utility accounts paid when in the tenant's name.
- Keep the smoke detector in working order and test the detector regularly. Notify the landlord immediately if it is not working. Tenants must not disconnect or disable the smoke detector or remove the battery.
- Accept responsibility for proper behavior of family, guests, and other persons visiting your rental premises, and for noises that disturb neighbors.

LANDLORD REMEDIES: A landlord should notify the tenant immediately when the tenant has caused a violation or breach of the rental agreement, or of the rules and regulations of the premises. If the tenant does not promptly correct the problem, the landlord has the following options:

14-Day Notice to Repair: Landlords must notify tenants in writing of violations that threaten or affect health and safety conditions and that can be corrected by repair, replacement or cleaning. Except emergency situations for which immediate action is required, tenants have 14 days to correct the violation or the landlord may do the repair and present an itemized bill of the actual expense for the tenant's payment. This bill must be paid with or before the next rent payment.

Acceptance of Rent with Reservation: Non-payment of rent is a material breach of contract sufficient to justify starting an eviction proceeding in court. In this circumstance, the landlord may accept the (late) rent payment and continue with the eviction process by giving written notice to the tenant that the rent (or other) payment is "accepted with reservation." The notice must state that the landlord is accepting the rent payment even though there is an existing breach, violation or other legal condition, or the tenant is otherwise not in compliance with the rental agreement. Acceptance of the rent by the landlord without such notice constitutes a waiver of the landlord's right to terminate the rental agreement.

Eviction: No landlord has the authority to issue an eviction judgment. An eviction results only from a court trial. Landlords must file a “Warrant for Unlawful Detainer” in the Fairfax County Courthouse to request an eviction trial. Both parties will be notified to appear at a preliminary hearing within 15 days, or earlier in emergency situations. The judge may hear the case at the hearing or assign a trial date within another 15 days. In Fairfax County, Tenant-Landlord hearings and trials typically occur on Fridays; all papers must be filled out correctly to avoid further delay, and both parties must attend. If either party fails to appear (even at the initial hearing) the judge may assume a lack of caring and issue a judgment against the absent party. At the hearing and/or trial, the tenant has the opportunity to present testimony, receipts, documents, or otherwise offer defense against the requested eviction. A 10-day appeal period follows eviction judgments except in a default judgment for the tenant’s non-payment of rent. If a writ of possession is issued by the court, the sheriff must evict all tenants listed on the rental agreement and/or named in the writ, and all other occupants (children, guests, invitees and trespassers) living in the rental premises, regardless of prior permission from the landlord.

TENANT REMEDIES: The tenant should notify the landlord or building manager verbally and in writing of maintenance problems that cause a Code violation and/or a breach of contract. Repairs should be made in a reasonable period of time; more than 30 days is considered by the courts to be an unreasonable delay. If the landlord does not promptly correct the problem, the tenant has the following options:

Health or Safety Complaints: If a problem threatens the tenant’s health and safety, it may be a violation of the Virginia Uniform Statewide Building Code (VUSBC) which is enforced by the Fairfax County Health Department (FCHD). The tenant should call the FCHD at (703) 246-2205 to request an inspection of the rental premises and the particular problem(s). If the problem is determined to be a Code violation, the FCHD will issue violation notice(s) and require the landlord’s prompt correction. The FCHD can take legal action against the landlord for failure to correct a Code violation. The tenant may also send a letter to the landlord via Certified Mail (with return receipt requested) clearly stating that the health or hazard problem (or other non-compliance) is a violation of the lease agreement and/or the state law. The letter must state that the

problem must be corrected within 21 days or the lease will terminate and the tenant will vacate 30 days after the landlord receives the letter. This is called a 21/30-Day Notice. (For details, refer to Part IV, Ending the Rental Agreement, 21/30 Day Notice.)

Failure to Maintain Utilities and/or fit premises: If a landlord fails to supply space heating, hot water, running water, sanitary sewer service, electricity, gas, or other essential service, or fails to provide necessary repairs (i.e., rotted structural member, leaking roof, collapsed sanitary drain, flooded or eroded yard, etc.) the tenant must give written notice that the failure is a breach of the lease. If the breach is not corrected in reasonable time, the tenant may take legal action in court to recover damages for: i) lost fair-rental value, ii) to obtain reasonable substitute housing during the period of non-compliance, and iii) termination of lease agreement if warranted. The court may award a reasonable lost fair rental value or may waive the payment of rent during the non-compliance, or it may terminate the lease. However, these tenant's rights are forfeited if the non-compliance was caused by or through the tenant's negligence or fault.

Rent Escrow: No tenant may withhold a rent payment, for any reason. However, upon landlord's breach of lease, violation of state law, other failure or non-compliance, the tenant may file a "Tenant Assertion and Complaint" with the General District Court to request a rent escrow account. When agreed by the court, the tenant makes the regular rent payments to the court instead of to the landlord. The court holds the rent in the account until the violation is corrected and the dispute between the tenant and landlord is settled. This procedure is for tenants who wish to continue the tenancy even though the landlord has not corrected a Code or lease violation. To have a case heard before a judge, all of the following conditions must be met:

- a serious condition must exist such as a fire hazard or threat to the tenant's life, health, or safety. The landlord's failure to maintain utilities, provide adequate sewage disposal facilities, exterminate a rodent or insect infestation, correct a lead-based paint hazard, or remedy other serious problems are sufficient cause providing the landlord has been notified of the hazard; and
- the landlord must have received written notice of the condition and failed to correct it within 30 days (considered reasonable). The tenant should send the written notice by certified mail; and

- rent must be paid to the General District Court within five (5) days of its due date; and
- the tenant must have received no more than three (3) notices to pay or vacate, or civil warrants to pay rent in the past year. If the tenant has lived in the premises six (6) months or less, the tenant must have received no more than two (2) notices or civil warrants to pay rent or vacate the premises; and
- the condition cited in the complaint must not have been caused by the tenant, the tenant's family or guest, or be caused by the tenant's unreasonable refusal to allow the landlord entry to correct the problem.

The court's initial hearing will be held within 15 days except in emergency situations in which the hearing will be sooner. The court may end the lease, ordering the tenant to vacate or it may award all of the escrow account to the tenant, or to the landlord. The court may reduce rent payments or may order the escrow money be used for repairs, or it may order the money be used for mortgage or credit payments to prevent foreclosures or liens on the property.

Fire or Casualty Damage: A tenant whose unit or premises are damaged or destroyed by fire or other casualty, making the unit uninhabitable, may leave the unit immediately. The tenant may also end the rental agreement by sending the landlord written notice within 14 days. Rent payments and any interest accrual from security deposits terminate on the day of the casualty. Security deposit, accrued interest, and prepaid rent will be prorated to that date and returned.

Landlord's Failure to Deliver Possession: If the landlord willfully fails to give the tenant access to the premises, rent payment stops. No rent is owed until the tenant is allowed into the unit. In addition, the tenant may either terminate the lease or sue for possession of the unit. Once delivery of possession occurs and is accepted by the tenant, he/she waives the right to terminate the lease, but may still recover damages.

Unlawful Ouster, Exclusion, or Diminution of Service: If the landlord unlawfully evicts or "locks out" the tenant, or willfully interrupts essential services such as gas or water, the tenant may sue the landlord to regain the service and/or possession of the premises and to recover damages and a reasonable attorney's fee (if incurred).

Arbitration: If a problem arises between tenant and landlord, the tenant may file a written complaint with the DCCCP at (703) 222-8435, and this office will attempt to mediate the dispute. If mediation is unsuccessful but both tenant and landlord want to resolve the problem out of court, the DCCCP can arrange a formal arbitration hearing before a panel of the Tenant-Landlord Commission. Decisions of the panel are legally binding and enforceable.

ATTORNEYS' FEES: If a tenant files suit to terminate a lease agreement for a landlord's alleged non-compliance with its requirements, the tenant is entitled to recover reasonable attorneys' fees unless the landlord that his/her actions were reasonable (§55-248.21). Similarly, if a landlord files suit to terminate a lease agreement for a tenant's alleged non-compliance with its requirements, the landlord is entitled to recover reasonable attorneys' fees unless the tenant proves that his/her failure/refusal to pay rent or to vacate the premises was reasonable (§55-248.31). The recovery of reasonable attorneys' fees does not stop the termination of the lease agreement, and the tenant must vacate the premises as directed by the court decision.

IV ENDING THE RENTAL AGREEMENT

RENTAL AGREEMENTS END IN THE FOLLOWING WAYS:

Notice to end the Agreement, or Non-Renewal of the Lease: Neither tenant nor landlord may break or change the lease agreement without the other party's consent in writing. Many rental agreements renew automatically unless the landlord gives advance written notice that the lease will not be renewed. Most agreements require 30 days (minimum) advance written notice, but may require 60 or even 90 days. Each party to a rental agreement should keep a copy of all written notices sent and received and obtain proof-of-delivery, either by the landlord's signature or by certified mail, return receipt requested. Many landlords respond to such notices in writing by providing the tenant with instructions for vacating the premises.

Changes in the Lease Provisions: A signed lease agreement cannot be materially changed during the term of the lease unless both parties agree to the change, in writing. Without such mutual agreement, the proposed change(s) must wait to be written into a renewal lease with a new term.

Five-Day Notice: When rent is not paid by the due date, the landlord must give the tenant a five (5)-day written notice to “pay up or quit” (vacate) the premises prior to starting the eviction process.

Seven-Day Notice: If a rental agreement is on a week-to-week basis, either the tenant or landlord may give a written notice terminating the agreement in seven (7) days.

30-Day Notice: Rental agreements often require a written termination notice to be given not less than 30 days prior to the end of the lease. Otherwise, the lease may automatically renew for another full year or it may renew on a month-to-month basis, and requiring a 30-day written termination notice before the first day of the last monthly rental term. Neither tenant nor landlord needs to provide a reason for ending the lease, but the landlord must advise the tenant of the right to be present at the final inspection. A 30-day termination notice is also used if a tenant or landlord commits a breach of lease that cannot be remedied. The rental agreement ends 30 days after the notice is received.

21/30-Day Notice: This written notice is used for extreme violations of the rental agreement or of the Virginia Residential Landlord and Tenant Act. It gives the recipient (landlord or tenant) 21 days to correct the violation. If the problem is not corrected within 21 days, the rental agreement ends nine (9) days later, on the 30th day after the notice is received. If the violation is corrected within the first 21 days, the tenant remains in the rental unit and the rental agreement continues. However, if the violation is *intentionally* repeated a second time, the landlord or tenant may once again give the other party a letter ending the lease 30 days after the notice was received.

Immediate Eviction: When a tenant breaks a rental agreement by involvement in a criminal or a willful act that is not correctable and which poses a threat to the health or safety of others, the landlord may cancel the agreement and ask the court for immediate eviction proceedings.

Breaking a Lease: Rental agreements are binding contracts and often have penalty clauses for ending the lease before its written termination date. The tenant is liable for and probably will be charged for rent that would have accrued under the lease or until the unit is rented again. Additional charges may be imposed for advertising the unit, cleaning, redecorating, maintenance, or administrative costs.

Military Exemption: A full-time member of the U.S. Armed Forces or Virginia National Guard, or a Civil Service technician with a National Guard unit may terminate a rental agreement with a 30-day written notice to the landlord, provided that the date of departure (surrender of premises) occurs within 60 days of the notice. Such tenants must:

- be transferred more than 35 miles from their rental premises; and,
- have received orders for more than three (3) months duration; or,
- have been discharged, or released from active duty, or full-time duty; or,
- have lost their basic allowance for quarters and have been ordered to government-supplied quarters.

Along with the written termination notice, the landlord must be given either a copy of the official orders or a letter signed by the tenant's commanding officer confirming the orders. The rent must be prorated to the date of termination. A 2002 amendment to §55-248.21:1 of the VRLTA prohibits a landlord from charging any liquidated damages for such early termination if the tenant has resided in the rental premises for at least 12 months. However, if the tenant has resided in the property for less than twelve months, the landlord may require payment of liquidated damages in an amount no greater than:

- One full month's rent if the tenant has completed less than six months of the tenancy; or
- One-half month's rent if the tenant has completed at least six but less than twelve months of the tenancy as of the effective date of the termination.

Building Conversion: A landlord may terminate all lease agreements in a building containing four (4) or more residential units if the termination is due to major rehabilitation or a proposed change in the building's use. This includes but is not limited to conversion to a condominium, cooperative, hotel, motel, planned unit development, or other commercial use; or the planned demolition and/or sale of all or any part of the building. In such cases, the landlord must give the tenants a 120-day written termination notice. If the proposed change is a conversion to a condominium, the landlord or owner must provide a written notice of the proposed change and a copy of the Public Offering Statement regarding the proposed conversion to the tenants. During the first sixty (60) days after delivery of such notice, each tenant has an exclusive right to purchase the unit he/she occupies, provided that the tenant's unit is planned to remain in the conversion without substantial alteration in its physical layout. Tenants who choose to relocate to another rental complex rather than purchase the converted unit may be eligible for financial relocation assistance and/or other rights described in the landlord/owner's submitted relocation plan.²

² Code of Virginia, Chapter 4.2, §55-79.94; Chapter 13, §55-22

CLEANING AND VACATING: Most lease agreements require the tenant to leave the premises in a clean condition. “Normal wear and tear” is not defined by law and is largely up to individual interpretation and application. The tenant should ask the landlord to explain normal wear and tear and should read, understand and comply with the lease agreement concerning cleaning, maintenance, and moving out conditions. Tenants should discuss any questions with the landlord while the tenant still has access to correct the conditions. All personal items and possessions must be removed, all trash and unwanted property must be discarded in waste containers, and all surfaces cleaned. If the lease agreement requires carpets to be professionally cleaned, the tenant must get the landlord’s written permission to “do it yourself,” otherwise provide an original receipt from a professional to show compliance. The tenant is legally responsible for paying rent until all keys are returned to the possession and control of the landlord or building manager.

INSPECTION AFTER VACATING: The landlord is required to inspect the premises within 72 hours after it has been vacated and the tenant has a right to be present at the inspection. The tenant must give advanced written notice to the landlord of his/her request to be present, and the landlord must notify the tenant of the date and time of the inspection. After the inspection, the landlord must provide a list of damages known at that time, although additional damages may be found during preparation for the next tenant. As of July 1, 2001, the landlord must return either the full security deposit with interest (if any), or any remaining balance of the deposit and interest together with an itemized list of any/all deductions for damages within 45 days of the tenant’s vacancy and surrender of the premises.

ABANDONED PROPERTY: A tenant's personal possessions may be considered to be abandoned if left in the rental premises or storage area after the rental agreement has ended. The landlord may dispose of such abandoned property as the landlord deems fit and appropriate, provided that he has given ten days written notice to the tenant of the intended disposal. As of July 1, 2001 in an eviction only, the landlord may give written notice at least 10 days prior to the eviction date that any property remaining or left unclaimed on the premises on eviction day may be immediately sold, removed to a storage area or unprotected to the curbside, or discarded as trash. If the landlord fails to provide such notice, he may not dispose of the unclaimed property until at least 10 days after the eviction. If the landlord sells abandoned possessions, any proceeds from the sale

must be credited to the tenant but may also be applied to expenses, damages, or any other money or rent that the tenant owes the landlord. After all deductions, any remaining funds must be added to the tenant's security deposit. In 2002, the VRLTA was amended to permit the landlord to give a 7-day or 10-day written notice in advance of the scheduled lease termination date. Consequently, any personal property of the tenant(s) remaining in the premises after the termination hour can be considered to be "abandoned" and may be disposed of by the landlord within the 24-hour period immediately following the termination.

SECURITY DEPOSIT: The security deposit is extra money held by the landlord to insure the tenant's compliance with all conditions and provisions of the rental agreement until the rental unit is surrendered to the landlord. A deposit may not exceed two (2) months rent, and may be used for late charges, bad check fees, or other charges or expenses in addition to any damages to the premises caused by the tenant. The security deposit is not an advance payment of the last month's rent, but it can be applied by the landlord toward any unpaid rent.

The landlord must return the security deposit within 45 days of the tenant's surrender of the premises. If any deductions are taken from the security deposit for damages or other expenses, the landlord must provide a written notice itemizing each damage and its corresponding deduction. Normal "wear and tear" (depreciation) or deterioration resulting from regular, normal use may not be considered as damages or deducted from the security deposit. The tenant should leave a forwarding address with the landlord so the security deposit can be returned. The landlord must return the security deposit along with any earned interest within 45 days after a tenant surrenders possession of the rental unit. The landlord must provide an itemized list of any/all charges that have been being deducted. If a landlord fails to return the deposit and/or interest within 45 days, a tenant may take legal action to recover the deposit plus reasonable attorney fees. Even if the property is sold, the new owner must comply with these security deposit provisions.

Interest Payments on Security Deposits: Security deposits governed by the VRLTA earn interest starting the day a tenant pays a deposit as part of a rental agreement, and ends when the tenant vacates the premises. Rentals not covered by the VRLTA do not earn interest on security deposits unless it is specifically stated in writing in the lease agreement. When earned, interest is credited in six (6)-month increments and is not compounded; only the deposit principal earns interest. The deposit, however, must be held by the landlord for 13 months before any interest is earned; if a tenant

leaves after just 12 months, no interest is credited to the tenant. Interest on security deposits was not required until July 1, 1974 when the rate was first set at 3.0% per year. Since then, the interest rate changed frequently until 1995 when it was amended to be the Federal Reserve Board *discount rate* that exists on January 1 of each year. In 1999 (effective January 1, 2000), the rate was again amended to be 1% less than the Federal Reserve Board discount rate on January 1st of each year. The table on page 31 shows all interest rates required by law since July 1, 1974. These rates can be verified at County libraries, by calling (202) 452-3000, or online at: <http://www.newyorkfed.org/pihome/statistics/dlyrates/fedrate.html>.

Tenants whose leases span several years earn interest throughout their occupancy. To determine the total amount of interest to be received, a tenant may have to use several interest rates, depending on the years of their residency. The security deposit (principal) is multiplied by the appropriate interest rate for each year the lease was in effect and by the number of six (6)-month periods in those years. This calculation may have to be done for several different interest rates and the results totaled to find the entire amount of earned interest (see the following sample calculation).

**INTEREST CALCULATION ON
\$400 Security Deposit (Principal)
From 7/1/74 – 12/31/98**

Rental Agreement Interest Begins or Renews	Applicable Interest Rate	Sample Calculation	Earned
From 7/1/74 To 1/1/80 (11 six-month periods)	1.5% per six-month period (or 3% per year)	1.5% x \$400 = \$6.00 ea. period, or	\$ 66
From 1/1/80 To 1/1/81 (4 six-month periods)	2.0% per six-month period (or 4% per year)	2% x \$400 = \$8.00 ea. period, or	32
From 1/1/81 To 1/1/85 (8 six-month periods)	2.25% per six-month period (or 4.5% per yr.)	2.25% x \$400 = \$9.00 ea. period, or	72
From 1/1/85 To 1/1/95 (20 six-month periods)	2.5% per six-month period (or 5% per year)	2.5% x \$400 = \$10.00 ea. period, or	200
From 1/1/95 To 1/1/96 (2 six-month periods)	2.375% per six-month period (or 4.75% per yr.)	2.375% x \$400 = \$9.50 ea. period, or	19
From 1/1/96 To 1/1/97 (2 six-month periods)	2.625% per six-month period (or 5.25% per yr.)	2.625% x \$400 = \$10.50 ea. period, or	21
From 1/1/97 To 1/1/99 (4 six-month periods)	2.5% per six-month period (or 5% per year)	2.5% x \$400 = \$10.00 ea. period, or	<u>40</u>
			\$ 450

Recent Applicable Interest Rates

1/1/99 - 6/30/99 = 4.50%	1/1/01 - 12/31/01 = 5.00%
7/1/99 - 12/31/99 = 3.50%	1/1/02 - 12/31/02 = 0.25%
1/1/00 - 12/31/00 = 4.00%	1/1/03 - 12/31/03 = 0.00%

FREQUENTLY ASKED

TENANT-LANDLORD QUESTIONS

Q. WHAT LAWS PROTECT ME AS A TENANT IN FAIRFAX COUNTY?

A. Two state laws govern most tenant-landlord relationships in Fairfax County; the Virginia Residential Landlord & Tenant Act (VRLTA) and the Virginia Uniform Statewide Building Code (VUSBC).

The VRLTA applies to all rental agreements in Fairfax County where the landlord owns and rents more than four dwelling units (i.e., multi-unit apartment buildings); however, most condominium and single family house rentals are not governed by the VRLTA. This code is available online at: http://www.co.fairfaxcounty.gov/dtcs/consserv/tenant/tenant_landlord_issues.htm by clicking the V.R.L.T.A. link, and in the reference section of most Fairfax County libraries under Chapter 13.2 of the Code of Virginia. If your rental agreement is not governed by the VRLTA, your tenant's/ landlord's rights and responsibilities are governed by the rental agreement. If you have no written rental agreement, you have practically no rights, protections, controls or limits over your rental situation.

The VUSBC establishes the minimum standards for health and safety in all dwellings, whether occupied by an owner or tenant; and it applies where the VRLTA does not. This code covers such items as plumbing, electric, structure, space heat, hot water supply, appliances and equipment, and environmental conditions, both inside and out of the property. These standards determine the level of upkeep and maintenance required of the landlord or tenant, according to the rental agreement. In Fairfax County, the VUSBC standards are enforced by the Fairfax County Health Department, Environmental Health Administration that can be reached at (703) 246-2205 or (703) 246-2300.

Q. I HAD TO PAY AN APPLICATION FEE TO BE CONSIDERED TO RENT AN APARTMENT. CAN I GET THIS FEE BACK IF I DO NOT RENT, OR IF MY APPLICATION IS NOT APPROVED?

A. Yes, if the application fee exceeds \$20. The landlord must refund (within 20 days) all application and/or deposit money in excess of his actual expenses and damages, together with an itemized list of those expenses and damages. If a rental unit was reserved for you and you changed your mind after approval, you

might be charged for lost rental income. If your application is rejected and you paid by cash, certified check, cashier's check, or money order, the return must be within ten (10) days of the rejection.

Q. HOW MUCH CAN A LANDLORD REQUIRE AS A SECURITY DEPOSIT?

A. When the VRLTA applies, security deposits (including pet deposits) may not exceed two months' rent, however, common practice is one month's rent. Some landlords require a non-refundable cleaning fee, either separately or included in the security deposit. There is no limit on the amount of security deposits when the VRLTA does not apply. In all cases, deposits and fees should be clearly identified in the rental agreement to avoid confusion and misunderstanding at the end of the rental term.

Q. CAN I USE MY SECURITY DEPOSIT FOR THE LAST MONTH'S RENT?

A. No. The deposit is to secure the tenant's performance of all parts of the rental agreement and is a security against any damages to the leased premises. It is not a rental payment, although the landlord can apply a security deposit to any amount of unpaid rent.

Q. IS THERE ANY LIMIT OR CEILING ON RENT INCREASES?

A. There is no rent control in Virginia. A landlord can increase rent to whatever he/she believes the rental market will bear, regardless of how long you have rented there, or how good your payment record is. However, rent cannot be increased during the term of the rental agreement.

Q. IF I DON'T LIKE THE APARTMENT OR THE AREA, CAN I BREAK THE LEASE OR JUST MOVE OUT? WHAT HAPPENS IF I DO?

A. A lease agreement is a legal contract under which the tenant is liable for all rent due through the termination date of that contract. If a tenant breaks the rental agreement before the termination date, the landlord can claim damages for loss of rental income, readvertising, redecorating, reasonable attorney fees, or other expenses caused by your breach of the contract. If you must leave the premises, discuss it with the landlord to find if a reasonable cost can be agreed; and get it in writing and signed by both parties so there is no misunderstanding at a later date.

Q. CAN I WITHHOLD THE RENT IF THE LANDLORD BREAKS THE LEASE, OR FAILS TO PROVIDE MAINTENANCE?

A. No! There is no legally acceptable reason to withhold a rent payment. By signing the lease agreement/contract, you agreed to pay the rent, so non-payment or withholding of the rent is as much (or more) of a breach as the landlord's alleged violation. If you have a rental dispute, first try to resolve it yourself by writing a complaint letter to your landlord. If your efforts are unsuccessful, you may also file a written complaint form with the DCCCP Consumer Protection Division for assistance. Complaint forms are available at:

http://www.co.fairfax.va.us/dtcs/consserv/IQext/CSW_acs.asp. and can be submitted online, faxed to (703) 324-3900, or mailed to the address on the complaint form. Other options are described under TENANT REMEDIES - (See **Rent Escrow**: pg. 20 of this handbook).

Q. WE HAVE NO HEAT (OR HOT WATER); THE LANDLORD HASN'T FIXED THE PROBLEM EVEN AFTER MANY PHONE MESSAGES. WHAT CAN WE DO?

A. Leaving a message or talking directly with the landlord (or managing agent) doesn't assure a fast response, so follow up with a written and dated notice stating the problem and requesting prompt correction. Lack of heat (in season) and hot water (year round) are violations of the Virginia Uniform Statewide Building Code (VUSBC), and of your lease. Contact the Fairfax County Health Department at (703) 246-2300 to request an inspection, and file a complaint with the Consumer Protection Division at (703) 222-8435 for assistance if the landlord continues to be non-responsive.

Q. I MOVED FROM A RENTAL UNIT THREE MONTHS AGO AND THE LANDLORD HAS IGNORED MY REQUESTS FOR RETURN OF MY SECURITY DEPOSIT. HOW CAN I GET MY MONEY BACK?

A. The Virginia Residential Landlord & Tenant Act (VRLTA) and many lease agreements require the landlord to return the security deposit within 45 days of the tenant's surrender of the premises, and to include an itemized list of any damages for which he/she has made deductions. If the landlord does not respond to your requests or you disagree with deductions that have been made, you can file a complaint with the Consumer Protection Division at (703) 222-8435.

Q. I RENTED A TOWNHOUSE FOR NINE YEARS. NOW, I HAVE MOVED AND THE LANDLORD SAYS HE DOESN'T OWE INTEREST ON MY SECURITY DEPOSIT, BUT A FRIEND SAYS HE DOES. WHO IS RIGHT?

A. The Virginia Residential Landlord & Tenant Act (VRLTA) requires interest to be paid on security deposits held in excess of 13 months. Most leases don't mention interest on security deposits. Therefore, unless the landlord owns and rents more than four rental units, the VRLTA in its entirety (including its interest requirement), does not apply to your rental agreement. However, if the lease agreement specifically states that interest is to be paid, that is enforceable even if the VRLTA does not apply.

Q. I HAVE A LEASE AGREEMENT TO RENT A ROOM IN A PRIVATE HOUSE, BUT NOW THE LANDLORD IS DEMANDING THAT I MOVE OUT, IMMEDIATELY. CAN HE EVICT ME LIKE THIS?

A. No, he can't, for two reasons. First, an eviction is a judgement resulting from due process in court and only the judge can issue an eviction order. No landlord has that authority. Secondly, the lease agreement is just as binding on the landlord as it is on the tenant, so if there is no breach of lease by the tenant, there can be no justification for an eviction. However, the landlord might still file a suit for an eviction, so you **MUST** attend the court hearing to defend your right to remain in the premises in accordance with the lease agreement.

Q. I RENTED MY CONDOMINIUM TO TWO INDIVIDUALS, BUT ONE LOST HIS JOB AND HASN'T PAID HIS HALF OF THE RENT. WHAT CAN I DO TO COLLECT THE UNPAID BACK RENT?

A. Most leases state that tenants are "jointly and severally responsible" which means that each tenant is responsible for the full rent payment. Any agreement to share or proportion the rent is solely between the tenants, and if one tenant can't uphold his part of the agreement, that may be a problem between the tenants, but the other(s) tenants must pay the full amount of rent due or all of the tenants will face eviction for non-payment.

Q. I RENT AN OLDER APARTMENT BECAUSE THE LANDLORD SAID IT WOULD BE ALL FIXED UP AND VERY NICE TO LIVE IN. THERE IS NO NEW PAINT OR CARPETS, THE AIR CONDITIONER IS NOISY, THERE IS NO MICROWAVE, AND THE TILE IS VERY OLD. HOW CAN I MAKE THE LANDLORD IMPROVE THESE THINGS?

A. These conditions existed when you inspected the premises. No law requires that a rental unit must be repainted and/or recarpeted between rentals; noisy equipment is not usually a violation of law; a microwave oven may be a common convenience but is not required by law; and old tile is perfectly acceptable if it is safe and secure. If these or similar conditions are not determined to be violations of the Virginia Uniform Statewide Building Code (VUSBC) and their repair or replacement was not a written condition or requirement of the rental agreement, then you accepted these conditions "as is" when you signed the lease, and you can't force the landlord to make the corrections now. Get it in writing or don't sign the lease.

Q. I RECEIVED ONLY PART OF MY SECURITY DEPOSIT AND A LIST OF DEDUCTIONS FOR "DAMAGES" THAT WERE NOT NOTED DURING THE WALK-THROUGH INSPECTION. IS THIS LEGAL?

A. Neither the Virginia Residential Landlord and Tenant Act (VRLTA) nor most lease agreements require that deductible damages must be found during a move-out inspection. It is quite possible that other damages or conditions were covered up or just not identifiable until a cleaning or maintenance crew enters the unit. If the claimed damages are attributable to the former tenant, the landlord may legally deduct for the necessary repairs.

Q. AFTER RENTING FOR FIVE YEARS, MY LANDLORD GAVE ME A NOTICE TO VACATE AND WON'T RENEW MY LEASE. I THINK HE IS DISCRIMINATING AGAINST ME. WHAT CAN I DO?

A. No law requires a landlord to renew or extend a lease agreement beyond its termination date, or to give a reason for not renewing a lease. If, however, you believe you are being discriminated against or that your civil rights are being violated, you should call the Fairfax County Human Rights Commission at (703) 324-2953.

Q. TWO MONTHS AGO, I TOLD THE MANAGER THAT I HAD TO MOVE AND THE WHOLE STAFF HEARD HIM SAY “OK.” NOW, HE HAS CHARGED AN EXTRA MONTH'S RENT BECAUSE I DID NOT GIVE PROPER NOTICE AS REQUIRED IN THE LEASE. IS THIS LEGAL?

A. Yes, it is legal. You have not given the proper notice required in the lease agreement and by law until it is written, delivered, and its receipt is signed for. Verbal notice or conversation does not fulfill this legal requirement, even if you have a dozen witnesses. Keep a copy of all written notices for your records.

HELPFUL TELEPHONE NUMBERS

Tenant/Landlord Services

Fairfax County Bar Association	703-246-2740
Fairfax County Human Rights Commission	703-324-2953
or TDD	703-342-2900
Fairfax County Consumer Protection Division & Tenant Landlord Commission	703-222-8435
or TDD	703-222-8653
Virginia (State) Office of Consumer Affairs	800-552-9963
or	804-786-2042
or TTY/TDD	800-828-1120
U.S. Dept. of Housing and Urban Development (HUD) - Housing Discrimination Hotline	800-669-9777
or TDD	800-927-9275
or TTY	215-656-3450
Fairfax County Fire & Rescue Dept. (Non-Emergency)	703-246-2126
or TDD	703-385-4419
Fairfax County Police Dept. (Non-Emergency)	703-691-2131
or TDD	703-204-2264

Credit Services & Reports

Better Business Bureau of Metro. Washington	202-393-8000
Credit Bureau, Inc.	301-680-2100
Credit Bureau of Northern Virginia, Inc.	703-777-2440
Equifax	800-685-1111
Trans Union	800-916-8800
TRW	800-682-7654
The Registry	800-999-4010

Fairfax Area Utilities

Verizon Telephone Company - Customer Service	800-922-0204
Fairfax County Water Authority	703-698-5600
Washington Gas Company (Billing, General Info.)	703-750-1000
Dominion Virginia Power (Service & Billing)	888 667-3000